

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2573 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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UNION OF INDIA

Versus

N PREMSINH

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Appearance:

MR JC SHETH for Petitioner

MR PM THAKKAR for Respondent No. 1

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 08/10/1999

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India, the Divisional Personnel Manager, Western Railway, Rajkot has challenged the judgment and award dated 19.3.1987 passed by the Presiding Officer, Industrial Tribunal (herein referred to as the "tribunal") wherein the tribunal was pleased to quash and set aside the order, dated 3.9.1973 passed by the

Divisional Mechanical Engineer, Western Railway, Rajkot terminating the services of Premsingh, a workman-respondent herein, with effect from 8.9.1973. The tribunal further directed the reinstatement of Shri Premsingh on his original post with continuity of service and also with full backwages from the date of termination of his services i.e. 8.9.1973 till he is reinstated.

2. The facts giving rise to the petition are as under:

3. Shri Premsingh-respondent herein was appointed as substitute under Locoforeman, Sabarmati on 22.3.1968 and after serving for statutory period he was given temporary status. The Western Railway, Rajkot, by its communication, dated 3.9.1973 has observed as under:

"Whereas his services are no more required by the Administration, they stand terminated with effect from 8.9.1973. An amount of Rs.181/- against a month's notice pay and further amount of Rs.452.50ps towards retrenchment compensation under the Industrial Disputes Act is paid herewith".

4. It appears that the Railway had further communication through Assistant Personnel Officer on 11.9.1973 which has been produced before the Industrial court as Annexure-II. In the communication, dated 11.9.1973 it has been stated that the services of the respondent stand terminated for the reasons that his work and conduct being found unsatisfactory.

5. It appears that the Western Railway Karmachari Parishad by its communication dated 23.4.1984 before (the Presiding Officer, Industrial Tribunal, Ahmedabad) the tribunal made reference being Ref (ITC) No.27 of 1984 in connection with the termination of services of respondent-workman. It was submitted by the learned counsel for petitioner that though his (respondent's) services were sought to be terminated in 1973 said reference has been made in the year 1984. It was alleged that the termination of respondent-employee was in violation of provisions of Industrial Disputes Act (hereinafter referred to as "the Act") and the said termination was nullity.

6. The petitioner herein has filed written statement

before the Tribunal on 2.6.84. Petitioner did contend before the Tribunal that his services were sought to be terminated and he was sought to be paid retrenchment compensation of Rs.452.50ps. However, communication 11.9.1973 the Railway did state that the termination order was passed on the ground that his work and conduct have been found unsatisfactory. The Railway further contended that the respondent-employee being an unapproved substitute was eligible to appear before the Screening Committee for absorption against regular post after empanelment. He was screened by the Screening Committee but because of his failure in screening test he was declared failed. In terms of letter dated 6.4.1972 it has been interalia stipulated that casual labour/substitutes who are found unfit and accordingly the services of respondent-workman were terminated because of his failure in screening test on account of his work and conduct being unsatisfactory.

7. The respondent No.1 was examined before the tribunal. However, the railway did not lead any oral evidence in this behalf.

8. The tribunal by its judgment and award dated 19.3.1987 after going through the evidence on record came to conclusion that "from the evidence in this case it clearly appears that the discharge order passed against the workman is not a simple discharge, but it is a punitive discharge. Punitive action can be taken against any workman without following the principles of natural justice. The retrenchment order terminating the services of the workman therefore cannot stand. The Railway Administration has also not tried to prove its case before the Tribunal by leading oral or documentary evidence. The tribunal was therefore pleased to grant relief of reinstatement as well as backwages.

9. Mr.J.C.Sheth, Ld.counsel vehemently contended before this court that the award passed by the tribunal is clearly illegal and erroneous and the tribunal has failed to take into consideration the relevant record in this behalf.

10. Mr.Niraj Ashar, the learned advocate for respondent-employee has tried to support the order of the tribunal.

11. Mr.J.C.Sheth, Ld.counsel has challenged the order

of the tribunal on various grounds. One of the contentions was that in this case the termination order was of 1973 and the respondent-employee made grievance through the Union before the tribunal in 1984. The tribunal while quashing and setting aside the order was pleased to observe as under:

"The workman concerned-Shri Premsingh is reinstated on his original post with continuity of service and also with full back wages from the date of termination of his service i.e. 8.9.1973 till he is reinstated".

12. Mr.Sheth has contended that the tribunal has not considered the delay which has occurred and therefore the order of the tribunal granting full back wages is illegal, erroneous and not justified in the facts and circumstances of the case. He has also submitted that the tribunal has also clearly erred in granting reinstatement.

13. In my view the reasoning and findings of the tribunal by which the tribunal has quashed the order of the authorities and granted reinstatement is legal and valid and I do not see any error in the reasoning of the tribunal in granting reinstatement to the employee.

14. However, I see considerable force in the argument of the learned counsel that the tribunal ought not have granted full backwages. I have therefore enquired as to what is the exact position today regarding the employee because the petition is of 1987 and it came up for hearing today i.e. 22.10.1999. Mr.Sheth, learned advocate for petitioner fairly stated after taking instructions from the officer of the railway that the original respondent-Premsingh died about 4/5 years back and the Railway has employed his son on compassionate grounds.

15. After taking into consideration this relevant subsequent fact on record and in view of the peculiar facts and circumstances of the case, I do not interfere with the order of the tribunal. If I interfere with the order of the tribunal, that means the railway is entitled to say that it will recover the amount of backwages from the son of late Premsingh. I do not think this direction is justified in the facts and circumstances of the case.

16. In the result, I do not interfere with the order of the tribunal about the backwages only on the ground

that the respondent-employee has died and his son was taken into service on compassionate grounds.

17. In view of the peculiar circumstances, I uphold the order of the tribunal and dismiss the writ petition and direct the petitioner to pay backwages to the son of the respondent-employee who has been appointed after the death of respondent-employee. Rule is discharged accordingly. Interim relief granted earlier stands vacated. No order as to costs.

18. Office is directed to send back the record and proceedings called for in this matter as directed by this court earlier.

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